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Attorney for Defendant
MARTIANCRAFT, LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Plaintiff Stephen Zarra ("Zarra") and defendant MartianCraft, LLC ("MartianCraft") submit the following Joint Trial Plan to most efficiently present this case for trial, which is set for a jury trial on February 17, 2017 with a pretrial conference on January 23, 2017:

1. **NATURE OF THE ACTION:** Plaintiff asserts claims for a violation of the COBRA notice requirements and negligence, seeking statutory penalties under COBRA and

1 loss of business income proximately caused by his claimed inability to obtain health insurance.
 2 Plaintiff seeks the full statutory penalty of \$110 per day plus loss of business income of
 3 approximately \$17,000. Defendant contends that the penalty, if awarded at all, should be
 4 substantially less than the maximum of \$110 per day and denies that plaintiff suffered any loss of
 5 business income proximately caused by the notice.

6 **2. STIPULATED FACTS:** In order to streamline the presentation of the
 7 case, the parties will present a stipulation of facts by the January 23, 2017 pre-trial conference.

8 **3. DISPUTED FACTUAL AND LEGAL ISSUES:** The parties will be
 9 presenting testimony and documentary evidence pertaining to the following disputed factual and
 10 legal issues that will need to be decided by the Court:

11 The parties disagree on the amount of an appropriate statutory penalty. Plaintiff
 12 contends that the violation was willful and therefore the maximum statutory penalty is warranted.
 13 Defendant contends that the COBRA notice from its healthcare company was the result of
 14 inadvertent administrative oversight, that MartianCraft provided actual notice of the need to
 15 obtain healthcare, and that it continued to pay for healthcare for Zarra for a time after the
 16 termination, and therefore a minimal, or no, penalty is warranted. The Court has discretion to
 17 limit the statutory penalty awarded, and courts have awarded as little as \$12 a day as a fine for a
 18 delayed COBRA letter. *See, e.g., Chaganti v. Sun Microsystems*, 2004 U.S. Dist. Lexis 24243
 19 (N.D. Cal. 2004).

20 The parties also dispute whether plaintiff suffered a business income loss
 21 proximately caused by the late COBRA notice. Plaintiff contends that as a result of the COBRA
 22 notice, he was unable to obtain health insurance, that without health insurance he was unable to
 23 work as a vendor at motorcycle racetracks and as a proximate result of his inability to work as a
 24 graphic design vendor, he lost approximately \$17,000 in business income. Defendant contends
 25 that the COBRA notice did not cause plaintiff to be unable to obtain health insurance, that the
 26 lack of health insurance did not prevent plaintiff from working at his graphic design business and
 27 that plaintiff has not carried his burden of proving his business income loss.

28 **4. WITNESSES AND EXHIBITS:** The parties will be presenting evidence

on the disputed issues as follows:

For Plaintiff: Plaintiff Stephen Zarra, 2-3 third party witnesses as to the restrictions on track attendance due to lack of health insurance and business income loss; MartianCraft witness to be determined based on upcoming deposition, regarding the circumstances under which the late notice was provided.

For Defendant: Defendant MartianCraft LLC intends to call 1-2 witnesses, depending on the witnesses called by Stephen Zarra. MartianCraft intends to present evidence that the COBRA notice was inadvertent, that MartianCraft had informed Mr. Zarra of the need to obtain health insurance, but that MartianCraft actually, inadvertently continued providing Mr. Zarra free insurance coverage through a portion of 2016.

5. OTHER MATTERS:

The parties do not anticipate offering expert testimony.

The parties have reached agreement regarding how to handle and schedule remaining discovery.

Because this is a bench trial, the parties propose presenting any motions in limine in abbreviated briefing limited to two pages per motion at the January 23, 2017 pretrial conference, and reserving ruling on those motions until the day of trial.

Dated: 12/2/16

/s/ Paul B. Justi

Counsel for plaintiff

Dated: 12/2/16

/s/ Erin B. Ashwell

Counsel for defendant

CERTIFICATION

I, Erin B. Ashwell, hereby certify that the signatory whose signature appears on the attached document appears has authorized me to sign such document on his/her behalf.

I declare under penalty of perjury under the laws of the United States that the foregoing is true.

Executed on December 2, 2016 at Roanoke, Virginia.

/s/-Erin B. Ashwell

Erin B. Ashwell